CC 96-98

ALTS

Association for Local Telecommunications Services

IMPLEMENTING LOCAL COMPETITION UNDER THE TELECOMMUNICATIONS ACT OF 1996

A PROPOSED HANDBOOK FOR THE FCC

Prepared by the Association for Local Telecommunications Services

March 1996

TABLE OF CONTENTS

EXECUTIVE SUMMARY

With the signing of the Telecommunications Act of 1996 on February 8, 1996, the United States completed its first comprehensive review of telecommunications regulation in more than sixty years. The '96 Act changes our national approach to telecommunications policy in two profound ways.

First, the '96 Act mandates full competition in all telecommunications markets, and rejects monopoly provisioning as the fundamental paradigm for telecommunications services. This marks a complete reversal from the 1934 Act, which assumed that all telecommunications services would be provided by monopoly providers.

Second, and perhaps even more fundamentally, the requirement of full competition applies with equal force to both the Federal and state jurisdictions. The essentially local character of phone service in America as it existed more than sixty years ago was incorporated into the 1934 Act by granting the states broad powers over local rates and entry requirements, which ultimately resulted in the sharp division of Federal and state authority in the separations process. As the nature of telecommunications changed over time, the FCC issued policy decisions adopting competition in such various markets as customer premises equipment, enhanced services, and long distance, but its power to impose those decisions on the states became uncertain after the Supreme Court placed severe limitations on its "preemption" powers in the ***Louisiana Public Service*** decision.[1]

Congress and the Executive Branch have now adopted clear pro-competitive requirements in the Act that bind both the Commission and the states. True, the Act encourages new entrants to negotiate adequate interconnection agreements with incumbent local exchange carriers ("ILECs") under state supervision, but the Act also entitles new entrants to insist that such agreements met standards which apply equally in both the Federal and state jurisdictions.

Several states have done yeoman work in paving the way for local competition. New York, California, Oregon, Washington, Michigan and several other jurisdictions have stepped up to many difficult issues, and made decisions from

[1] ***Louisiana Public Service Comm'n* v. *FCC***, 461 U.S. 938 (1983).

which the Commission can clearly benefit in articulating statutory requirements. Indeed, the recent report of the Local Competition Work Group of the National Association of Regulatory Commissioners ("NARUC Work Group Report") strongly suggests that the policy approach towards local competition at the state level is not so inconsistent with the '96 Act as might be suspected.[2]

It is true no state jurisdiction has yet achieved the full pro-competitive requirements of the '96 Act, but the Commission should be reassured this is the clear direction of enlightened local regulation. The Commission should look to the best state efforts for initial guidance on the various requirements covered by the legislation, and then make specific additions and amplifications in order to implement the '96 Act.

It will obviously feel unfamiliar -- perhaps even uncomfortable -- for the Commission to issue comprehensive regulations on matters it scrupulously avoided for over six decades, but this is clearly what the '96 Act requires. Fortunately, there is no reason why the Commission need feel apprehensive that its implementation will interfere with its longstanding desire to treat state regulators with full comity. This "handbook" for implementing the local competition sections of the '96 Act (Title II of the Communications Act, new Sections 251, 252, and 253) demonstrates how this can be done in a straightforward manner while fully vindicating Congress' intent.

Critical substantive needs:

- Regulations specifying that CLECs are entitled to interconnection at all current and future technically feasible points at costs reflecting the most economic form of interconnection.

- Regulations declaring that CLECs are entitled to immediate unbundling at Total Service Long Run Incremental Costs ("TSLRIC") for loops and ports, and other appropriate network elements.

- A declaration that full number portability is feasible and should be promptly implemented by all states along with robust interim portability rules, and cost recovery requirements.

---

[2] NARUC Staff Subcommittee on Communications, <u>Local Competition Work Group Summary Report</u>, February 1996.

- Regulations providing that ILECs which currently or in the past have regularly exchanged traffic via bill and keep arrangements must also exchange traffic with CLECs in the same manner, or else to enter into mutually agreeable arrangements for mutual and reciprocal compensation for such traffic exchange based on the cost of such terminations.

- Regulations providing that CLECs are entitled to incremental cost-based physical collocation of all equipment at their discretion, final just and reasonable virtual collocation rates, and prohibition of burdensome provisioning practices.

- A declaration that CLECs are entitled to include ordinary compliance provisions in their Section 252 agreements.

- Immediate interim rules making it clear that under the '96 Act ILECs cannot:

  - police state entry requirements
  - demand confidentiality agreements;
  - require information about CLEC business plans; and,
  - delay state-ordered negotiations.

Critical procedural needs:

- A requirement in the Commission's regulations that any request for negotiations, any request for arbitration or state approval, and all actual agreements which claim to invoke or comply with Sections 251 or 252, or with any portion of those sections, must <u>state</u> that it invokes, or that the parties believe it complies with, the particular section, subsection, or paragraph involved.[3]

  - If an agreement does not claim specific compliance with any of the

[3] The purpose of this requirement is to ease the burden imposed on arbitrators, state agencies, Federal courts, and the Commission, by requiring parties to disclose their intentions. It would not alter the substantive standards involved, nor would it raise any presumptions as to compliance with those sections. In order to enforce this requirement, absence of such a statement should create a presumption of non-compliance with the statutory requirements.

specific statutory provisions of Section 251(b) or (c) (i.e., the agreement only refers to itself as a "Section 251" agreement), it should be treated as though the parties had labeled it a "Section 251(a)" agreement (i.e., it should be presumed to be non-compliant under Sections 251(b) and (c), and reviewed as though the parties had labeled it a Section 251(a) agreement).

- State approval of arbitrated agreements should raise no presumption of compliance with any part of 251 or 252.[4]

- The Commission's regulations should amplify Section 251(i)'s mandate that agreements be available on an unbundled basis down to the level of the portions of the agreement which are identified as complying with particular sections and paragraphs (i.e, if "Clauses 15(a) and (c)" of an agreement are identified as complying with Section 251(c)(4), and "Clause 17" is identified as complying with Section 251(c)(6), then non-party carriers should be able to order either "Clause 15(a) and (c)" or "Clause 17" individually).[5]

- The '96 Act requires that all existing interconnection agreements be submitted to state agencies for approval (Section 252(a)(1)), and empowers all non-party carriers to order from approved agreements (Section 252(i)). Many existing interconnection arrangements among the ILECs (particularly the arrangements among the RBOCs and the independents) involve "sweetheart" deals, so the ILECs cannot be trusted to carry out the statutory mandate on their own. The Commission's regulations should require that all existing interconnection agreements be made public so that non-party carriers can submit them to state agencies for approval as required by Section 252(a)(i).

- The Commission's regulations should provide that agreements approved by a

---

[4] Because state approval of voluntary agreements (including any portions of agreements which are not submitted for arbitration) does not require state review of compliance with the specific provisions of Section 251(b) or (c), state approval of such voluntary agreements necessarily creates no presumption or res judicata effects as to whether an agreement complies with any part of those provisions.

[5] This general rule that agreements need not be unbundled below the level of a particular subsection or paragraph of Section 251 has at least one exception. Individual network elements provided pursuant to Section 251(c)(2) must be provided individually to non-parties on an unbundled basis. See Section 251(c)(2): "The duty to provide ... non-discriminatory access to network elements on an unbundled basis ...;" emphasis supplied.

state can be implemented by non-party carriers anywhere in an ILEC's serving area, including territory outside the approving state, absent demonstrable differences in costs or other material circumstances (see Section 252(i), which contains no geographic limitation on non-party utilization).

I. THE SUBSTANTIVE AND PROCEDURAL STRUCTURE OF THE PRO-COMPETITIVE PORTIONS OF THE '96 ACT

A quick reading of new Sections 251 and 252 of Title II added by the '96 Act might suggest that the substantive requirements pertaining to local competition are contained in Section 251, while the procedural implementation is contained in Section 252. Section 252 indeed sketches out how initial implementation of interconnection agreements should occur at the state level, but it is also plain that substantive matters are addressed in each section, just as procedural matters are scattered throughout Sections 251-254, and 271. For example, Section 252 specifies cost standards for several of the interconnection standards addressed in Section 251, and Section 271 amplifies the various interconnection requirements for Bell Operating Companies which are more briefly alluded to in Section 251. Similarly, the procedural requirements imposed on states and the Commission are augmented in Section 251, where the Commission is required to issue implementing regulations, and in Section 271, where the Commission is directed how to handle Regional Bell Operating Company ("RBOC") requests to enter in-region inter-LATA service.

Even within Section 252, the procedural details are complex. Section 252(e)(5) orders the Commission to preempt state review of Section 252 agreements: "If a State commission fails to carry out its responsibility under this section ... ," but never defines what constitutes a failure by a state agency to carry out its responsibility. Similarly, Section 252(e)(6) provides for exclusive review of state actions under Section 252 by Federal district court, but never specifies the appropriate standard of review. And the form of compulsory arbitration imposed in Section 252(b) is never defined in the '96 Act.

This procedural complexity effectively compels the Commission to address procedural questions in its implementing regulations with as much clarity and forcefulness as with substantive issues. The short time limits imposed by the '96 Act (six months for the issuance of Section 251 regulations, ninety days for determinations under Section 271), make it imperative that involved parties, state agencies and arbitrators, and the Federal courts, share a common understanding of the '96 Act's basic procedural structure.

The Commission's Section 251 regulations (required by Section 251(d)) are the only proceeding in which a common understanding of these basic procedural rules can be issued and given effect. ALTS believes the procedures set forth below are crucial to the implementation of the '96 Act, and completely consistent with its intent. But even if the Commission were to disagree with any of these suggestions, ALTS still urges the Commission to formulate its own procedural rules dealing with these matters in order to forestall the gamesmanship that will quickly undercut statutory implementation in the absence of a common procedural framework.

As a threshold matter, the Commission's regulations should expressly recognize that the '96 Act envisions three basic kinds of agreements: (1) interconnection agreements among CLECs and ILECs which comply with the detailed requirements of subsections (b) and (c) of Section 251; (2) interconnection agreements among CLECs and ILECs which do not necessarily comply with (b) or (c) of Section 251, but which are still interconnection agreements under Section 251(a), and therefore must be submitted to state agencies for approval (Section 252(a)(1)); and (3) agreements which do not involve interconnection as defined under Section 251 (perhaps joint ventures, technology sharing, etc.), and thus need not be submitted to state agencies for approval, at least under the '96 Act.

These three different categories, each with their particular regulatory structures (since even the non-interconnection agreements which fall into the third category are still subject to other state and Federal requirements), makes it imperative that negotiating parties at least try to make it clear to the rest of the world into which category an agreement is intended to fall.

Any request for negotiations, any request for arbitration or state approval, or any specific agreement which claims to invoke or comply with Section 251 or 252, or with any subsection of those sections, should state that it invokes, or that the parties believe it complies with, the particular section or subsection. There is no sound reason why a state arbitrator, a state agency, a Federal district court, or this Commission should have to invest time and effort trying to guess the original intent of parties which have not identified the sections of the Act with which they seek to comply.

A requirement that parties identify the portion of Sections 251 or 252 with which they believe their agreement complies is important because the '96 Act allows ILECs to continue negotiating agreements outside the highly-detailed requirements of Sections 251(b) or (c). Administratively, it will be much less time consuming for the States, the courts and the Commission if the parties so "label" their requests and agreements.

At the same time, of course, a statement by the parties to an agreement that it is intended to comply with any part of either Section 251 or 252 would raise no presumption that the requirements of those sections have actually been met. Under the statute the issue of whether carrier agreements satisfy the requirements of the Act is left, in the first instance to the states (in the case of those portions of agreements which are arbitrated), and, in the final analysis, to the Commission in the following situations: (1) involving RBOC compliance with Section 271; (2) involving the failure of a state commission to carry out its statutory duties (Section 252(e)(5)); and (3) in deciding referrals from Federal district courts in the event the courts choose to refer appeals from state agency decisions under Section 252(e)(6) to the Commission.

The same requirements should also be applied to existing agreements. Section 252(a)(1) requires that existing interconnection agreements be submitted "to the State commission." At the time of submission, each party should indicate the portions of Section 251 with which the agreement is supposed to comply. In the absence of agreement between the parties, just as with an unlabeled agreement, the presumption for arbitrators, states agencies, Federal courts and this Commission, should remain that the agreement (or at least the portion of the agreement as to which the parties do not agree) does not comply with any specific requirements of Section 251. Unless this requirement is imposed, ILECs could submit numerous existing interconnection agreements for approval under Section 251(c), hoping the sheer volume of filings will result in at least one approval, which they would then claim to constitute compliance with part of Section 271. CLECs, which are forced by business needs to enter agreements which do not necessarily comply with Section 251(b) or (c), would then have to litigate each such approval request in the states and Federal courts to insure they did not lose their right to later seek agreements which <u>do</u> comply with the specific provisions of Section 251(b) or (c).

There is no burden to any party in requiring that requests for Section 252 agreements, along with the agreements themselves, clearly state the portions of Section 251 being invoked. If an ILEC discovers that no competitive local exchange carrier ("CLEC") agrees with its interpretation of Section 251(b) or (c), that ILEC is entitled under Section 252(f) to submit a statement of generally available terms to a State commission, and thereby comply with Section 251.

The Commission should also adopt a rule to the effect that state approval of the arbitrated portions of any agreement raises no presumption of compliance with any part of Sections 251 or 252 even if the approval specifically states that the agreement, or any portion thereof, complies with particular requirements of those sections. When a state has made such a finding, that finding should be open to challenge in a Section 271 proceeding

II. SECTION 251 - INTERCONNECTION

The substantive requirements of Section 251 are divided into three basic parts. Section 251(a) sets out the general duties of all "telecommunications carriers" concerning interconnection, and network features and functions in very simple terms. Section 251(b) lists the obligations of all "local exchange companies" -- including both CLECs and ILECs. The heart of Section 251's pro-competitive requirements are contained in Section 251(b)'s requirements of reciprocal compensation (with cost recovery as amplified in Section 252(d)(2)), number portability, dialing parity, rights of way, and in Section 251(c), paragraphs (1) through (6), as amplified in Section 271(c)(2)(B)'s "checklist."

<u>Congress spelled out these duties in detail in order to insure the creation of pro-competitive environments in local exchange markets</u>. It is these requirements which need to be addressed clearly and comprehensively in the Commission's regulations in order to implement the Act. The portions of Section 252 which impose certain cost standards on these requirements will also be discussed here.

A. The Commission Has Broad Authority to Issue Regulations in Order to Implement the Remedial Portions of the '96 Act.

The ultimate source of the Commission's authority to issue robust pro-competitive regulations pursuant to Section 251(d) is simple. As the Commission recently noted in ***In the Matter of Federal-State Joint Board on Universal Service,*** CC Docket No. 96-45, released March 8, 1996, at ¶ 8:

> " ... a fundamental underlying principle of the 1996 Act is the Congressional desire 'to provide for a pro-competitive, deregulatory policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies to all Americans'" (citing S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess, 1 (1996)).

But the blunt fact is that the "pro-competitive framework" envisioned by Congress will not come about unless the Commission implements vigorous pro-competitive Section 251(d) regulations.

End users neither know, nor care, whether non-party carriers now have the right to order unbundled elements from state-approved interconnection agreements under Section 252(i). What they care about is getting the service they want, at the price they want, at the time they request, and with the quality they expect. If they are getting fast busy tones from Electric Lightwave, Inc. ("ELI") because US West undersizes the trunks used to exchange traffic, if NYNEX won't accept LOAs from TCG's customers,[6] if Brooks Fiber customers in Michigan keep getting their service dates missed because Ameritech won't meet its assurances to Brooks, customers will come to view competitive local providers as "second-rate," and the march to effective local competition will be seriously, perhaps even fatally, wounded. If the Commission's Section 251(d) regulations fail to accommodate this fundamental basic need -- the same "tyranny of the customer" that rules all competitive markets -- then the '96 Act will not succeed.

Federal courts have long recognized that agencies implementing remedial statutes have plenary power to issue implementing regulations. See, e.g., ***Whirlpool Cor. v. Secretary of Labor***, 445 U.S. 1, 13 (1980); ***Secretary of Labor v. Carolina Stalite Co.***, 734 F. 2d 1547 (D.C. 1984). There is no legal or policy reason why the Commission should try to tip-toe through the process of issuing regulations under Section 251(d). For example, there is no "micro-management" involved in recognizing the plain fact that the "technical feasibility" of number portability has been recognized by industry forums and state agencies in Illinois and Georgia.

Similarly, the obligation to provide reciprocal compensation is contained in Section 251(b)(5), but the cost standards and discussion of "bill and keep" are contained in Section 252(d)(2). The Commission's regulations dealing with Section 251(b)(5) would be pointless if they failed to incorporate and protect the requirements of Section 252(d)(2).[7]

---

[6] See ***In the Matter of Teleport Communications - New York v. NYNEX***, complaint filed May 8, 1995, File No. E-95-4.

[7] The Commission's plenary power concerning its Section 251 regulations is plainly implied over several matters which are not expressly addressed in the statute. For instance, the statute does not mention Total Service Long Run Incremental Costs ("TSLRIC"), but the cost methodologies contained in the regulations have to confront the issue of joint and common costs. See ***In the Matter of the Proceedings, on the Commission's Own Motion, to Refine the Definition of, and Develop a Methodology to Determine, Long Run Incremental Cost for Application Under 1991 PA 179***, Michigan No. U-10620, released September 8, 1994, at 5: " ... TSLRIC is the sum of all basic network functions or building blocks, i.e., the increments, for a particular service as well as the service-specific costs. Use of the TSLRIC will ensure that all customers who use identical network functions are assigned the same level of cost."

Even more importantly, the various requirements of Section 251 are amplified in the checklist portion of Section 271, which concerns RBOC entry into in-region inter-LATA services. The Commission has only ninety days in which to act on petitions under Section 271, even though proceedings on similar requests at the MFJ courts have taken months and years. It would clearly be inconsistent with the basic goals of the '96 Act, and frustrate the Commission's ability to issue reasoned decisions, unless the regulations issued pursuant to Section 251(d) are allowed to encompass all the matters embraced within Section 251 in the light of how Congress has dealt with those matters throughout the '96 Act.

B. Section 251(c)(1) - Duty to Bargain in Good Faith

Section 251(c)(1) states that both parties involved in negotiations relating to Section 251(c)(2) through 251(c)(6) have the duty to bargain in good faith. Unfortunately, the ILECs have already revealed bad faith under this provision. US West, for example, has broken off state-mandated discussions with ELI for the asserted reasons that the '96 Act somehow "restarts the clock," and informed ELI that it will not start negotiations until US West has formulated its own position on all aspects of Section 251.[8] It would totally undercut the deference reflected in the '96 Act to those states which seek to advance competition even faster than the statutory schedule to permit ILECs to use the passage of the '96 Act to defeat pro-competitive state mandates.

Equally frightening is SWB's approach (Attachment B). Appointing itself "phone ranger" in charge of enforcing the law, SWB has created an "Account Team" which makes sure CLECs comply with the way SWB interprets state certification requirements under the '96 Act, demands that the "good faith" negotiations be confidential; and insists that interconnection requests be "specific" by demanding to know which services a CLEC intends to offer! But no state has appointed SWB to enforce their remaining certification rules, and SWB is plainly not entitled to conceal its non-compliance with Section 2521(c)(1) under the cloak of a confidentiality agreement, or to demand access to CLECs' business plans. The Commission's regulations should clearly prohibit the ILECs from incorporating the role of state entry "enforcer" into the negotiation process, and flatly prohibit any demands for "confidentiality."

---

[8] ELI has filed complaints in Utah and Oregon concerning US West's behavior. ALTS understands that some ILECs are also demanding that CLECs sign affidavits attesting that negotiated agreements comply with Section 271. Obviously, such "gun to the head" tactics are the antithesis of good faith bargaining.

C. Section 251(c)(2) - Interconnection

Section 251(c)(2) provides as follows:

"**(2) INTERCONNECTION**- The duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network--

(A) for the transmission and routing of telephone exchange service and exchange access;
(B) at any technically feasible point within the carrier's network;
(C) that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection; and
(D) on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, in accordance with the terms and conditions of the agreement and the requirements of this section and section 252."

Interconnection under Section 251 (c)(2) is the set of network interconnection arrangements which include the physical connections necessary for the exchange and routing of traffic between a telecommunications carrier and an incumbent local exchange carrier as well as the rates, terms and conditions for such network interconnection arrangements. Interconnection rules need to recognize that CLECs are co-carriers and therefore eligible for the same treatment as incumbents afford each other in their existing interconnection arrangements. Interconnection regulations need to specify therefore that:

- Interconnection should be available at any requested technically feasible points, i.e. the end office, the tandem, or any other meet-point between the customer and the CLEC;[9]

---

[9] See ***In the Matter of the Application of Electric Lightwave, Inc. For a Certificate of Authority to Provide Telecommunications Services In Oregon,*** Order 96-021, entered January 12, 1995, at 68-69: "Consistent with our decision that AECs [alternative exchange carriers] should be treated as cocarriers, the Commission finds that the applicants should be permitted to interconnect with incumbent providers on the same terms and conditions that LECs have used to interconnect their telecommunications networks ... We also agree with TCG that the parties will bargain on more equal terms and have a greater incentive to agree upon the most efficient interconnection if all costs

(continued...)

- Interconnection should be subject to at least the same technical standards incumbent LECs afford each other now, as well as future interconnection standards, including all industry norms, and should permit interconnection regardless of the transmission medium, i.e., digital loops, ISDN, SONET, so that networks and applications can evolve without ambiguity as to the decree of interconnectivity;[10]

- Interconnection should be reciprocal and enforceable concerning ordering, testing, provisioning intervals, etc. CLECs should not be subject to unnecessary testing, and should have the right to include compliance mechanisms in interconnection agreements to insure ILECs carry out their interconnection obligations in a timely and quality-oriented manner;

- Interconnection should allow for the exchange of all types of traffic including, but not limited to: local, toll, operator-assisted, paging, cellular, access, directory assistance and emergency services; and,

---

[9](...continued)
associated with the construction of facilities are share equally... The parties appear to agree that there are no significant technical obstacles to interconnection, provided the AECs follow existing protocols and procedures and install equipment that complies with network standards." See also ***In the Matter of the Application of City Signal, Inc., for an Order Establishing and Approving Interconnection Arrangements with Ameritech Michigan,*** Case No. U-10647, Opinion and Order dated February 23, 1995 at 19: " ... interconnection for the exchange of local traffic between Ameritech Michigan and City Signal should be available either at the end office, the tandem, or at a mutually agreed upon meet-point. The cost of constructing and maintaining the facility should be shared on a 50/50 basis between Ameritech Michigan and City Signal."

[10] See BellSouth Europe's submission to the European Commission's Green Paper filed March 15, 1995, at 6: "'Competitors are disadvantaged if they cannot order and obtain leased lines, circuit rearrangements, and enhanced services on reliable commercial schedules that are equivalent to the service a[n incumbent] provides to its own departments or subsidiaries. Experience in the liberalized markets (U.S. , U.K.) suggests that regulators need to establish a requirement for equal provisioning and to monitor [the incumbent's] performance to ensure equal access." See also BellSouth New Zealands' "Regulation of Access to Vertically-Integrated Natural Monopolies, A Discussion Paper," dated September 1995, at 9-10: Terms of access are vital to the emergence of competition because "[t]he terms and conditions for interconnection, and the price of those complementary network services, determine which firms capture what rents, and how;" and US West International's response to OFTEL's consultatitve document at 8: "[I] is ... in the dominant operator's self-interest to make interconnection as difficult and expensive as possible."

- The exchange of traffic should be accomplished in the most technically efficient manner, subject to mutual responsibility for network redundancy and reliability concerns, without any restriction upon the nature of the interconnecting carrier's traffic (for example, ILEC demands that one way trunks be employed when two way trunks are more efficient).

Pricing made available to new entrants for such interconnection should be on nondiscriminatory rates, terms and conditions such as that provided to the ILEC itself or that the ILECs afford each other. CLECs should not be required to purchase unnecessary equipment or otherwise assume cost obligations other than those assumed by the ILEC for comparable network functionalities. This would include meeting for traffic exchange at common meet-points with each carrier responsible for the construction costs up to that meet-point, and then equally sharing the cost of the meet point. Parties should be permitted to negotiate their own rates, terms and conditions, however such rates, terms and conditions should also be available to all other interconnecting carriers at their option.

Under subsection Section 252(e) of the Act, all agreements for interconnection must be available for public inspection, which will include those among the incumbents LECs themselves. Under Section 252(i), the individual terms of these agreements must be made available to any other requesting carrier. While not expressly required by the '96 Act, such public filing should occur within seven days of the incumbent LEC's receipt of a request for such agreements.

D. Section 251(c)(3) - Unbundling

Section 251(c)(3) provides:

> "**(3) UNBUNDLED ACCESS**- The duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis at any technically feasible point on rates, terms, and conditions that are just, reasonable, and nondiscriminatory in accordance with the terms and conditions of the agreement and the requirements of this section and section 252. An incumbent local exchange carrier shall provide such unbundled network elements in a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service."

Unbundling involves the identification and disaggregation of the bottleneck components of the incumbent's local exchange network into a set of piece parts that can be individually provided and priced based on cost.[11] Unbundling requires that the requesting carriers only need to purchase from the incumbent those elements that they need to provision services.[12] Such unbundled elements shall include but not be limited to:

- Access to any and all transmission medium, i.e. analog, digital, conditioned and ISDN, between the end office and the subscriber. Generally this transmission path is referred to as the subscriber loop. The subscriber loop is not a single, inviolate, piece of copper running straight out of the end office into the subscriber premises (see Attachment C). While the situation may prove to be different in non-telephone networks, there are multiple points in ILEC networks between an incumbent carrier's end office and the subscriber premises which will be natural points of interconnection (most importantly, for loop and port functionalities), and should therefore be available to requesting interconnectors on an unbundled basis;

- Access to the essential routing, directory related and emergency service functionalities commonly known as "shared platform" facilities. These functions include, but are not limited to, unbundled access to: billing information such as call detail recording and transmission, operator services, E-911 services,

---

[11] See NARUC Work Group at 17-18: "... all telephone service providers should be required to unbundle services to the extent requested by other carriers if it is economically reasonable and technically feasible without causing damage to network integrity."

[12] See, e.g., ***Proposed Introduction of a Trial of Ameritech's Customers First Plan in Illinois,*** 94-0096, order released April 7, 1995, at 47-48: "There was very little dispute in this proceeding regarding the importance of unbundling the incumbent LECs' networks to promote competition in the local exchange ... The full pro-competitive benefits of reducing the capital cost barriers to entry can be achieved only if the incumbent LECs are required to sell to their competitors only those network components and functionalities that new LECs need ... Full unbundling facilitates physical interconnection and the development of a network-of-networks by creating new points of interconnection between incumbent LECs and new LECs ... [W]e generally endorse Staff's approach of establishing a policy which favors requiring incumbent LECs to unbundle their networks and to offer interconnection at all 'logical connection points,' including the interface between feeder and distribution plant. We believe that the establishment of a policy favoring multiple interconnection options is one of the conditions that will ensure and enhance the viability of local exchange competition, and thus set that general policy guideline in this order."

directory assistance, directory listings, signaling, including delivery of all necessary messages and access to related databases, and STPs;[13]

- Access to any and all Operational Support Systems ("OSPs"), such as "moves and changes" functionalities, enhanced end user billing options, etc.; and,

- Unbundled trunk side interconnection.

The cost of each unbundled element must be based on the long run incremental cost of each component as provided by an efficient provider of such services. In no case should the cost of such unbundled elements exceed that offered to other carriers or customers purchasing similar services from the incumbent LEC.[14]

The '96 Act requires that all existing interconnection agreements be submitted to state agencies for approval (Section 252(a)(1)), and empowers all non-party carriers to order from approved agreements (Section 252(i)). The Commission's interconnection regulations should stipulate that CLECs are also entitled to long-standing interconnection arrangements with ILECs even where an ILEC has canceled all such arrangements. Until recently, most of the interconnection arrangements among the ILECs (particularly the arrangements

---

[13] See ***Washington Utilities and Transportation Comm'n v. U S WEST,*** Fourth Supplemental Order, Docket No. UT-941464, released October 31, 1995, at 57: "The Commission agrees that there are alternatives to published directories and directory assistance. However, there is a strong public and consumer interest in having a complete listing of subscribers for each local calling area available to subscribers. Commission rules enforce this interest by requiring that subscribers be provided the directories necessary to access all numbers within a local calling area ... [W]e do believe a unified directory database is essential ... USWC and GTE must include all listings of telephone subscribers submitted to them by companies serving the same area served by the directory or database." See also ***Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service***, R.95-04-043, order mailed December 22, 1995, at 45-46: "Access to E-911 service is essential for each Californian. We will therefore require that every CLC be able to provide each of its customers with access to 911 services. To accomplish this mandate, Pacific and GTEC are ordered to take the actions necessary to provide the CLCs with 911-interconnection services by the commencement of local exchange competition on January 1, 1996."

[14] In cases where the total unbundled costs are limited by the retail ceiling, the rate-to-cost ratios of the unbundled elements should each be set equal to the rate-to-cost ratio of the retail service which acts as a price ceiling.

among the RBOCs and the independents) involved "sweetheart" deals, and the ILECs will attempt to cancel these agreements rather than make them available to CLECs. But the long history of LEC reliance on these arrangements for services such as directory assistance, listings, E-911, LIDB access, etc., makes it essential that they also be available to CLECs.

For most CLECs, the premier unbundled network element is the loop, and it was access to unbundled loops that was the clear goal of Section 25(c)(3). ALTS believes that the unbundling of network elements below the first serving wire center, most notably the loop and the ports, should proceed immediately and be available at least at unseparated total service long run incremental costs ("TSLRIC").[15] TSLRIC for unbundled loops will insure full recovery of loop costs (including the portion of interstate loop costs currently recovered by the CCL) for the ILECs.[16] Both the Commission and the states should also recognize there will likely be situations, much like non-premium Feature Groups A and B, and certain current forms of interim number portability which degrade network functionality for the interconnection and, therfore, where the service provider should not be allowed to recover all its costs.

The important factor for ALTS' members is that cost-based unbundled loops -- above all other network elements -- must be made available immediately if the local competition promised by the '96 Act is to have any meaning.

E. Section 251(c)(4) - Resale

Section 251(c)(4) provides:

"(4) **RESALE**- The duty--

---

[15] See n. 7, supra. The reasonable profit on such unbundled loops need not be calculated on a rate base analysis. Instead it could reflect a "cash flow" analysis or any of several financial techniques for calculating a normative investor profit in a competitive market.

[16] See ***In the Matter of the Application of City Signal, Inc., for an Order Establishing and Approving Interconnection Arrangements with Ameritech Michigan,*** Case No. U-10647, Opinion and Order dated February 23, 1995. The PSC expressly approved total unseparated TSLRIC costs for the pricing of unbundled loops, and found that such a standard would ensure that all customers which use identical network elements are assigned the same level of costs (at 55). Accordingly, the PSC concluded that any assessment of EUCL charges to unbundled loops should be offset against the unbundled rates to preclude double recovery of costs (id. at 57).

among the RBOCs and the independents) involved "sweetheart" deals, and the ILECs will attempt to cancel these agreements rather than make them available to CLECs. But the long history of LEC reliance on these arrangements for services such as directory assistance, listings, E-911, LIDB access, etc., makes it essential that they also be available to CLECs.

For most CLECs, the premier unbundled network element is the loop, and it was access to unbundled loops that was the clear goal of Section 25(c)(3). ALTS believes that the unbundling of network elements below the first serving wire center, most notably the loop and the ports, should proceed immediately and be available at least at unseparated total service long run incremental costs ("TSLRIC").[15] TSLRIC for unbundled loops will insure full recovery of loop costs (including the portion of interstate loop costs currently recovered by the CCL) for the ILECs.[16] Both the Commission and the states should also recognize there will likely be situations, much like non-premium Feature Groups A and B, and certain current forms of interim number portability which degrade network functionality for the interconnection and, therfore, where the service provider should not be allowed to recover all its costs.

The important factor for ALTS' members is that cost-based unbundled loops -- above all other network elements -- must be made available immediately if the local competition promised by the '96 Act is to have any meaning.

E. Section 251(c)(4) - Resale

Section 251(c)(4) provides:

"**(4) RESALE**- The duty--

---

[15] See n. 7, supra. The reasonable profit on such unbundled loops need not be calculated on a rate base analysis. Instead it could reflect a "cash flow" analysis or any of several financial techniques for calculating a normative investor profit in a competitive market.

[16] See ***In the Matter of the Application of City Signal, Inc., for an Order Establishing and Approving Interconnection Arrangements with Ameritech Michigan,*** Case No. U-10647, Opinion and Order dated February 23, 1995. The PSC expressly approved total unseparated TSLRIC costs for the pricing of unbundled loops, and found that such a standard would ensure that all customers which use identical network elements are assigned the same level of costs (at 55). Accordingly, the PSC concluded that any assessment of EUCL charges to unbundled loops should be offset against the unbundled rates to preclude double recovery of costs (id. at 57).

(A) to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers; and
(B) not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service, except that a State commission may, consistent with regulations prescribed by the Commission under this section, prohibit a reseller that obtains at wholesale rates a telecommunications service that is available at retail only to a category of subscribers from offering such service to a different category of subscribers."

ALTS believes that the resale provided under this section should be subject to the Commission's long-standing requirement that there be no prohibitions or restrictions on the resale of the service of dominant carriers, such as the ILECs. See, e.g., ***Regulatory Policies Concerning Resale and Shared Use of Common Carrier Services and Facilities***, 60 FCC 2d 261, 321 (1976), ***amended on recon.***, 62 FCC 2d 588 (1977), ***aff'd sub nom. AT&T v. FCC***, 572 F. 2d 17 (2d Cir.), ***cert. denied,*** 99 S. Ct. 213 (1978), and recently reaffirmed in ***In the Matter of US West Tariff F.C.C. Nos. 3 and 5, Trans. No. 629***, released September 28, 1995, at ¶ 11: "The Commission found that numerous public benefits would flow from unlimited resale and sharing activity."[17]

F. Section 251(c)(6) - Collocation

"**(6) COLLOCATION**- The duty to provide, on rates, terms, and conditions that are just, reasonable, and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that the carrier may provide for virtual collocation if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations."

Physical collocation is only one of various interconnection functionalities which facilitate competition, and should be available at the option of a new entrant. Because the statutory requirement is not limited to any particular kind of equipment or end user service, the Commission's regulations should emphasize that it encompasses any existing or future form of equipment employed in central

[17] State commissions can prohibit resale of services available at retail only to a category of subscribers.

offices. Physical collocation should be made available through the use of existing ILEC facilities, solely excepting where no such facilities exist, in which case the ILEC should be required to provide reasonable substitute arrangements (including, but not limited to, virtual collocation under $1 leaseback arrangements, or meet point arrangements) at the cost it affords such facilities to itself or to its most favored customers. Charges imposed on the collocating carrier by the carrier in whose facility the collocation occurs will be limited to the incremental cost of accommodating the equipment and space of the collocating carrier.[18]

Additional charges for physical collocation may include such items as the rent of the floor space occupied by the collocating carrier's equipment. However, such rent should be limited to the average local rent for similar space in similar conditions in similar geographic locations, or to amounts charged to most favored customers for housing customer equipment. Any and all other costs should be clearly delineated and calculated at the best available rates, terms, and conditions available for similar functionalities by the most favored customers.[19]

At the threshold, the Commission's physical collocation rules should make it emphatically clear that CLECs which choose to switch from existing virtual arrangements to physical collocation should <u>not</u> have to pay any non-recurring charges. CLECs should have the right to select virtual or physical collocation, or both, and have the right to switch from one arrangement to another subject only to the actual costs imposed by such a change. Most virtual collocation arrangements are currently provided pursuant to "$1 leaseback" options. These can be converted to physical arrangements (assuming for the sake of argument that the LECs are correct that a mandated $1 leaseback constitutes physical collocation) simply by permitting interconnectors to "buy-back" at $1. Special security arrangements, such as cages, alarms, etc., <u>should only be installed at the request of the interconnector</u>, and any charges for such construction should be limited to the costs that would

---

[18] The cost standard of the statute is not satisfied by offering rental of real estate plus two channel terminations at tariffed rates, as SWB has recently demanded. First, tariff rates currently reflect a fully allocated cost standard which is inconsistent with the "interconnection at cost" standard of Section 251. Second, channel termination rates reflect the fact that most customers are far from a central office, and thus impose much greater costs than are involved in the provisioning of connections to collocated equipment.

[19] In the event that most favored customers do not pay an identified separate rental charge for collocated equipment, the rental charges to CLECs should be zero until such time as the ILEC assesses specific rental charges for most favored customers.

have been borne by the interconnector, had it performed the construction itself.[20]

G. Section 251(b)(5) - Reciprocal Compensation

"**(5) RECIPROCAL COMPENSATION**- The duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."

Section 251(b)(5) requires that all LECs establish mutual and reciprocal compensation agreements for the origination and termination of telecommunications. Agreements must provide for recovery of each carrier's costs based on a reasonable approximation of the additional costs of terminating calls. Arrangements that provide for the mutual recovery of costs through the offsetting of reciprocal obligations, including "bill and keep," are expressly authorized by Section 252(d)(2).[21]

---

[20] Because Section 251(c)(6) refers to both physical and virtual collocation, the Commission should also complete its ongoing inquiry into virtual collocation tariffs within the statutory time schedule. ***In the Matter of Local Exchange Carriers' Rates, Terms, and Conditions for Expanded Interconnection Through Virtual Collocation for Special Access and Switched Transport***, CC Docket No. 94-97, Phase II. In particular, the Commission should now: (1) order that all ILECs provide the $1 leaseback option (since the statute has removed any question as to the Commission's power to impose physical collocation, in the event a court were to find that the $1 leaseback constituted physical collocation), (2) find that all existing rates are not supported because the ILECs refused to comply with the ODI requirement they calculate the amounts recovered from most favored customers for similar amounts; and (3) prohibit current onerous provisioning practices.

[21] See ***In the Matter of the Application of Electric Lightwave, Inc. For a Certificate of Authority to Provide Telecommunications Services In Oregon,*** Order 96-021, entered January 12, 1995, at 52: "Based on the evidence and arguments presented, the Commission finds that compensation for the exchange of local traffic between the applicants and the LECs in the competitive zones should be based on bill and keep arrangements for an interim period of not more than 24 months. We are persuaded that bill and keep has fewer shortcomings than other compensation proposals made in this case and will function as a reasonable compensation mechanism during the initial stages of competitive entry into the local exchange market ... There are several other advantages to implementing bill and keep as an interim compensation mechanism. Because bill and keep is the dominant practice for terminating EAS traffic between adjacent LEC exchanges in Oregon and throughout the nation, it is the least difficult

(continued...)

There are three compelling reasons why the Commission's regulations should recognize the CLECs' right to "bill and keep' arrangements. First, because ILECs currently exchange traffic among themselves under "bill and keep" arrangements, they are obligated to file such agreements with their state commissions under Section 252(a)(1) for approval as negotiated agreements, and then make those agreements available to non-party carriers (Section 252 (i)).

Second, almost all networks currently lack the ability to measure the volume of exchanged traffic, and adding that ability would very costly if done outside of normal network upgrades. The ILECs might well accept such a burden if it means CLECs have to invest in measuring devices rather than competitive facilities, but for CLECs it would manifestly act as a barrier to entry.

Third, the recovery of costs for reciprocal compensation is limited to "the additional cost of terminating such calls" (Section 242(d)(2(A)(ii)). Because CLEC traffic would have been carried by ILECs, and would have imposed the same or even greater costs (since CLECs will usually be more efficient), there are no "additional costs" to recover.[22]

---

[21](...continued)
compensation arrangement to implement from an administrative standpoint. The inherent simplicity of bill and keep makes it a sensible choice as a transitional compensation mechanism until a more comprehensive interconnection rate structure can be implemented ... Interim bill and keep arrangements will also avoid transactions costs associated with cash based compensation methods because interconnecting carriers will not incur the expense of measuring, collecting, and auditing traffic. This is advantageous during the initial states of competition, because measurement costs impose a greater relative burden on new entrants, who must spread the capital cost of such system over much smaller volumes of traffic." See also ***In the Matter of the Application of City Signal, Inc., for an Order Establishing and Approving Interconnection Arrangements with Ameritech Michigan***, Case No. U-10647, Opinion and Order dated February 23, 1995, at 19-30; ***Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service***, California R.95-04-043, order mailed December 22, 1995, at 31; and ***Washington Utilities and Transportation Comm'n v. U S WEST***, Fourth Supplemental Order, Docket No. UT-941464, released October 31, 1995, at 29-36.

[22] See US West International's response to OFTEL's consultative document (at 13): "The provisioning of call completion, as part of the public policy goal of 'any-to-any' calling, is more properly seen as a cost which should be recovered, rather than as a source of revenue. Operators should make their 'mark-ups' on their retail services ...."

Accordingly, the Commission's regulations need to specify that CLECs are entitled to exchange traffic on a "bill and keep" basis wherever the costs of creating the ability to measure traffic exchange is disproportionate to the likely amounts that would be paid under a discrete cost system. Individual parties to bill and keep arrangements could, of course, include the right at any time to negotiate compensation rates based on LRIC costs for an optimally efficient carrier. Furthermore, because the statute does not mandate any particular cost recovery structure (in particular, there is no prohibition of flat-rated recovery where it properly reflects the underlying cost structure), neither should the Commission.

H. Section 251(b)(2) - Number Portability

> "**(2) NUMBER PORTABILITY**- The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission."

Section 251(b)(2) imposes on all local exchange carriers the duty to provide "to the extent technically feasible" number portability in accordance with requirements prescribed by the Commission. Section 251(e)(2) requires the associated costs "be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." Section 271(c)(2)(B)(xi) imposes additional requirements on RBOCs seeking permission to enter in-region long distance service by ordering them to provide interim number portability "through remote call forwarding, direct inward dialing trunks, or other comparable arrangements" until Section 251(b)(2) regulations are issued.

The two key concepts in number portability are "technically feasible" (used in Section 251(b)(2)), and "competitively neutral" cost recovery (used in Section 251(e)(2)). The "interim number portability" provision of Section 271(c)(2)(B)(xi) is essentially moot in light of the industry's technical consensus in Illinois and Georgia, and the Georgia Commission's recent implementation order.[23] Because full service provider portability is clearly "technically feasible," there is no reason for any FCC delay in issuing full number portability regulations within the same time frame as the Commission's Section 251 regulations.[24]

---

[23] Each situation involves the LRN form of the "n-1" data dip architecture.

[24] In the course of finding that full number portability is feasible and ordering its implementation by the states, the Commission should also require that it may not degrade the quality of calls (such as not supporting SS-7 based features), or needlessly
(continued...)